

ISSUED NOVEMBER 21, 2000

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

C. J. CASAZZA and ELIZABETH	)	AB-7582
CASAZZA)	
dba Bottle Shop Liquors	)	File: 21-31268
899 First Street	)	Reg: 99046983
San Jose, CA 95110,)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Robert R. Coffman
)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	September 21, 2000
	)	San Francisco, CA

C. J. Casazza and Elizabeth Casazza, doing business as Bottle Shop Liquors (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended appellants' off-sale general license for 15 days, for appellants' clerk having sold an alcoholic beverage to a person exhibiting obvious signs of intoxication, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §24200, subdivisions (a) and (b), arising from a violation of

¹The decision of the Department, dated February 3, 2000, is set forth in the appendix.

Business and Professions Code §25602, subdivision (a).

Appearances on appeal include appellants C. J. Casazza and Elizabeth Casazza, appearing through their counsel, Thomas Salciccia, and the Department of Alcoholic Beverage Control, appearing through its counsel, Nicholas Loehr.

FACTS AND PROCEDURAL HISTORY

Appellant's license was issued on July 1, 1964. Thereafter, the Department instituted an accusation against appellant charging the sale to the person exhibiting signs of intoxication. An administrative hearing was held on December 28, 1999, at which time oral and documentary evidence was received. At that hearing, testimony was presented that a patron, David Cisneros, while in the premises exhibited many obvious signs of intoxication. Appellant's clerk, while being in a position to observe these signs, sold an alcoholic beverage to Cisneros.

Subsequent to the hearing, the Department issued its decision which determined that the violation had occurred. Appellants thereafter filed a timely notice of appeal, naming themselves as filing, without benefit of counsel.

Appellants were informed on May 24 and June 5, 2000, of the date and place of the oral argument hearing before the Appeals Board, and the time in which a brief setting forth their cause concerning the matter, should be filed. On June 30, 2000, a letter was received from attorney Thomas Salciccia (this counsel having represented appellants in the administrative hearing but had not filed the notice of appeal). He acknowledged that a brief in the matter was due July 24, 2000. No brief from appellants or their counsel has been filed.

The Appeals Board has reviewed the notice of appeal and has found insufficient assistance in that document which would aid in review, except for the contention that the penalty is excessive. The Appeals Board is not required to make an independent search of the record for error not pointed out by appellants. It is the duty of appellants to advise the Appeals Board that the claimed error exists. Without such assistance by appellants, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].) The Appeals Board so deems, except for the issue of penalty.

The Appeals Board will not disturb the Department's penalty orders in the absence of an abuse of the Department's discretion. (Martin v. Alcoholic Beverage Control Appeals Board & Haley (1959) 52 Cal.2d 287 [341 P.2d 296].) However, where an appellant raises the issue of an excessive penalty, the Appeals Board will examine that issue. (Joseph's of Calif. v. Alcoholic Beverage Control Appeals Board (1971) 19 Cal.App.3d 785 [97 Cal.Rptr. 183].)

Appellants request that the penalty be reduced from the 15 days (20 days being the usual penalty for this type of violation), to essentially three days ("9 days with 6 days on the books"), due to their long period in business (according to the accusation, 36 years at the premises, but argued by appellants in the administrative hearing as 49 years - RT 47). It would appear to the Board that the violation occurred, and the license should most likely be sanctioned in some reasonable

manner. The reduction of five days from the usual penalty appears to be within the broad discretion afforded the Department. We cannot say the Department abused its discretion in not affording appellants the penalty they requested at the administrative hearing, and again requested in their appeal documents.

ORDER

The decision of the Department is affirmed.²

TED HUNT, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.